

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
WILKESBORO DIVISION**

Donald Ray Riley

Debtor.

Case No. 12-51145

**OBJECTION TO CLAIM OF
CAPITAL ONE, NA**

NOW COMES Debtor, by and through his attorney of record, and objects to Proof of Claim filed by Capital One, NA (now, eCAST Settlement Corporation), a secured claim in the sum of \$7,895.00 with an unsecured claim of \$1,600.97, the total claim being \$9,495.97. In support hereof, Debtor shows unto the Court as follows:

1. Debtor filed his original Petition and Plan herein November, 28, 2012.
2. Capital One, NA filed a Proof of Claim (claim # 5) alleging a secured claim in the amount of \$7,895.00 stemming from a purchase money security interest in a 2010 Polaris ATV. The Proof of Claim filed by Capital One, NA further alleges an unsecured claim of \$1,600.97 for a total claimed debt of \$9,495.97.
3. As disclosed in his amended Statement of Affairs filed on July 9, 2013, Debtor sold his interest in the Polaris ATV to an unrelated third party in April 2012 for \$6,500.00, the fair market value of the ATV at that time.
4. Capital One, NA (now eCAST Settlement Corporation, hereafter "eCAST") failed to file append documents to its filed Proof of Claim which would prove its claim of secured status as to the ATV; moreover, Debtor believes that his purchase of the said ATV was via a credit card and that the subject indebtedness is an unsecured "revolving" credit card debt.
5. Debtor believes that the claim of eCAST should be classified as a fully unsecured debt; however, should such creditor be able to produce records substantiating and proving its claim, then and in that event, Debtor believes such creditor's claim should be allowed only as an administrative claim of \$6,500.00 with ant remaining balance thereof classified as unsecured.

Wherefore Debtor prays the Court as follows:

1. That, after notice and hearing, this court sustain Debtor's objection to the filed claim of Capital One, NA (eCAST) and allow such creditor an unsecured claim in the amount of \$9,495.97.

2. And for such other and further relief as this Court seem just and proper.

This the 25th day of July, 2013.

By: _____

Geoffrey A. Planer
Attorney for Debtor(s)
N.C. State Bar No.: 6338
Post Office Box 1596
216 S. Marietta Street
Gastonia, NC 28053-1596
(704) 864-0235

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
WILKESBORO DIVISION

Donald Ray Riley) Case No. 12-51145
)
)
) Chapter 13
)
Debtor(s)) NOTICE OF HEARING
_____)

TAKE NOTICE that Debtor has filed papers with the Court to object to the Proof of Claim of Capital One, NA. A copy of Debtor's Objection accompanies this Notice.

TAKE NOTICE THAT YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

TAKE NOTICE that if you do not want the Court to allow the Objection to Proof of Claim, or if you want the Court to consider your views on the Motion, then on or before August 9, 2013 you or your attorney may:

- 1) File with the Court a written Response (an answer, explaining your position) at:

Office of the Bankruptcy Clerk
United States Bankruptcy Court
401 West Trade Street
Charlotte, NC 28202

If you mail your Response to the Court for filing, you must mail it early enough so that the Court will **receive** it on or before the date stated above.

- 2) If you file a Response, you must also mail a copy to:

Geoffrey A. Planer, Esq.
Post Office Box 1596
Gastonia, North Carolina 28053-1596

- 3) A hearing will be held on: **September 6, 2013 at 9:30 a.m.** at the Johnson J. Hayes Federal Building, 207 West Main Street, Wilkesboro, North Carolina. Any interested party may appear thereat and be heard.

All interested parties may attend and be heard. (If you do not oppose this Motion, you do not have to attend.)

TAKE FURTHER NOTICE that **if you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.**

Dated this the 25th day of July, 2013.

By: _____
Geoffrey A. Planer, Attorney for Debtor(s)
N.C. State Bar No.: 6338
216 South Marietta St. / P.O. Box 1596
Gastonia, NC 28053-1596
Phone: (704) 864-0235
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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
WILKESBORO DIVISION

Donald Ray Riley

Case No. 12-51145
(Chapter 13)

Debtor(s)

CERTIFICATE OF SERVICE

The undersigned certifies that on the 25th day of July, 2013, he served a copy of the foregoing: **Objection to Claim of Capital One, NA and Notice of Hearing** by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail:

U. S. Clerk of Bankruptcy Court
401 West Trade Street
Charlotte, NC 28202

United States Bankruptcy Administrator
Western District of North Carolina
402 W. Trade St., Ste. 200
Charlotte, NC 28202

Steven G. Tate
Standing Trustee
212 Cooper Street
Statesville, NC 28677

eCAST Settlement Corporation
c/o Bass & Associates P.C.
3936 E. Ft. Lowell Ste 200
Tucson, AZ 85712

☐ by hand delivering said copy to the person(s)
hereinafter named:

By: _____
Geoffrey A. Planer, Attorney for Debtors
N.C. State Bar No.: 6338
P.O. Box 1596
216 S. Marietta Street
Gastonia, NC 28053-1596
(704) 864-0235